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August 19, 1996

HAND-DELIVERED
William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: WT Docket No. 95-157, RM-8643, *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*

Dear Mr. Secretary:

On behalf of Tenneco Energy ("Tenneco"), and pursuant to Section 1.429 of the Commission's Rules, I enclose herewith for filing an original and eleven (11) copies of Tenneco's "Consolidated Reply to Oppositions to Tenneco's Petition for Clarification and Partial Reconsideration" in the above-captioned proceeding. Please stamp and return to this office the enclosed copy of this filing designated for that purpose. You may direct any questions concerning this material either to Julian L. Shepard, Esquire, or to Leo R. Fitzsimon, Esquire, of this firm.

Respectfully submitted,

Eric T. Werner

Enclosures

cc: William G. Collins, Esquire
Mr. Brady McConaty
Julian L. Shepard, Esquire
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No. of Copies rec'd 0+4
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation	)	WT Docket No. 95-157 RM-8643

CONSOLIDATED REPLY TO OPPOSITIONS TO TENNECO'S PETITION FOR CLARIFICATION AND PARTIAL RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, Tenneco Energy ("Tenneco"), by its attorneys, hereby replies to the following comments and oppositions to the Petition for Clarification and Partial Reconsideration ("Petition") filed by Tenneco on July 12, 1996, in response to the First Report and Order and Further Notice of Proposed Rule Making,[1/] in the above-captioned proceeding: the "Opposition to Petitions for Reconsideration" of AT&T Wireless Services, Inc. ("AT&T") (the "AT&T Opposition"); the "Opposition to Petitions for Reconsideration" of Omnipoint Communications, Inc. ("Omnipoint") (the "Omnipoint Opposition"); the "Comments on Petitions for Reconsideration of the Personal Communications Industry Association" ("PCIA Comments") and the "Comments of

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1/ FCC 96-196 (April 30, 1996), 61 Fed. Reg. 29,679 (1996) ("First R & O" or "Further Notice").

Pacific Bell Mobile Services on Petitions for Reconsideration" ("PBMS Comments") (collectively, the "Opposing Parties").

I. THE RIGHT OF ACCESS TO INCUMBENTS' FACILITIES MUST BE NARROWLY DEFINED

Tenneco's Petition sought clarification of the type and frequency of access incumbents are required to provide PCS licensees under new Section 101.71 of the Commission's rules.[2/] Tenneco urged the Commission to set reasonable limits on frequency of access under the rule and to require PCS licensees to pay the incumbent's reasonable costs to facilitate additional visits to the same site beyond the first inspection. In its Comments, PBMS urged the Commission not to impose a limit on the number of visits and opposed the suggestion that PCS licensees pay any costs of multiple inspections. PCIA's Comments assert that PCS licensees would be too busy to waste time and money on unnecessary inspections. Nevertheless, the Commission should clarify Section 101.71 as requested in the Petition. Adoption of a requirement for reimbursement of the incumbents' costs for multiple visits to remote sites would likely prevent abuses and provide adequate incentives to PCS licensees to minimize the number of inspections and thus minimize disruptions to incumbents' communications operations.

2/ Tenneco Petition at 2.

II. THE TEN YEAR SUNSET WILL RETARD BAND-CLEARING EFFORTS

Tenneco's Petition sought reconsideration of the ten-year sunset on microwave operations in the 1.9 GHz band on the grounds that the rule will delay band-clearing, especially in rural areas, and potentially will deprive incumbents of reimbursement for their relocation costs.[3/] Omnipoint argued that the sunset will provide incentive for incumbents to relocate and negotiate more quickly.[4/] However, this does not apply for the many incumbents in rural areas who have not been contacted by PCS licensees and are unsure when, if ever, they will be approached by a PCS licensee seeking to relocate them. It is fundamentally unfair to require incumbents to absorb relocation costs due to gamesmanship under an arbitrary sunset date by PCS licensees.

AT&T took an extreme and unreasonable position on this issue, arguing that the time periods for relocation and reimbursement obligations of PCS licensees should be shortened, rather than lengthened.[5/] AT&T again urged the Commission to adopt the previously rejected proposal to require 2 GHz microwave incumbents to vacate the band by the end of the mandatory period, or, in the alternative, to convert incumbent microwave licenses

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3/ Tenneco Petition at 9.

4/ Omnipoint Opposition at 2.

5/ AT&T Opposition at 3.

to secondary status immediately upon expiration of the mandatory negotiation period.[6/]

Such a requirement would give PCS licensees *carte blanche* to negotiate in bad faith during the mandatory negotiation period, secure in the knowledge that no matter how inadequate their relocation offers are, the incumbent will be required to vacate the band on a date controlled by the PCS licensee. The alternative offered by AT&T -- that the Commission automatically convert incumbents' licenses to secondary status at the end of the mandatory period -- is equally unreasonable. More importantly, there is no factual basis in the record to support such drastic and harshly inequitable measures.

III. OVERALL 1.9 GHz SYSTEM CAPACITY SHOULD BE USED TO JUDGE THE COMPARABILITY OF A REPLACEMENT SYSTEM

Tenneco's Petition sought reconsideration of new rule Section 101.75(b)(1).[7/] PCS licensees should be required to provide incumbents with replacement systems with the same overall system throughput capability rather than the amount of throughput capability in use by the incumbent at the time of relocation.[8/]

6/ Id. PBMS and PCIA both expressed their "strong support" for AT&T's proposal in their oppositions to Tenneco's Petition.

7/ Tenneco Petition at 8.

8/ AT&T Opposition at 6; Omnipoint Opposition at 6; PBMS Comments at 5-6; PCIA Comments at 7-8. Omnipoint states that "[a]t least during the involuntary relocation period, incumbents have no right to a surplusage simply because they have refused to relocate during either the voluntary or mandatory negotiation periods. This statement falsely implies that the success of relocation negotiations hinges primarily on an incumbent's reasonableness. PCS licensees must share equally the obligation to negotiate

If left unchanged, this new rule likely will result in the under-compensation of incumbents in some circumstances.[9/] Accordingly, the Commission should require PCS licensees to provide microwave incumbents with the same throughput capacity they possess in their current 1.9 GHz microwave systems.

IV. THE TWO-PERCENT CAP ON RECOVERY OF TRANSACTION EXPENSES IS ARBITRARY AND CAPRICIOUS

Tenneco's Petition questioned the basis for adoption of the two-percent limit on recovery of transaction costs by incumbents.[10/] Several parties stated that the cap will prevent abuses by incumbents who may view the relocation process as a business opportunity.[11/] But no party has provided any evidence

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reasonably and to make adequate and acceptable offers to incumbents. Incumbents alone cannot be blamed if relocation does not occur by the end of the mandatory period.

9/ Some incumbents have purchased additional throughput capacity in order to accommodate future expansion and to handle seasonal or occasional peak load periods. See Tenneco Petition at 9.

10/ Tenneco Petition at 2.

11/ AT&T Opposition at 7 (advocated no reimbursement for transaction costs, or in the alternative, that the Commission retain the two percent limit); Omnipoint Opposition at 3; PBMS Comments at 3; PCIA Comments at 6-7. Omnipoint noted that Tenneco and other incumbents "also argue that consultant's fees incurred during the voluntary and mandatory period should be reimbursed even when PCS operators must later relocate the incumbents voluntarily." Omnipoint Opposition at 3. The clear implication of Omnipoint's argument is that failure to relocate voluntarily is always the fault of the incumbent, when in fact, as discussed supra at note 6, often this may not be the case. The Commission should reject the arguments made by the Opposing Parties and alter the relocation rules to ensure that all reasonable expenses of incumbents are reimbursed in order to make them whole as a result of compulsory relocation.

that two-percent of the average transaction costs is a fair or reasonable measure of actual transactional expenses. Incumbents should not be required to pay any of the transaction costs of the microwave relocation process, including those associated with involuntary relocation.

V. THE C BLOCK INSTALLMENT PAYMENT PLAN SHOULD BE RECONSIDERED

Tenneco's Petition challenged the equity of the installment payment plan for C block licensees in new Section 24.249(b).[12/] None of the Opposing Parties have made persuasive arguments in support of the installment payment plan, especially as the plan relates to links that an incumbent would itself relocate.[13/] Omnipoint essentially suggested that if incumbents are unwilling to subsidize C block licensees, they should not engage in self-relocation.[14/] First, there is no legitimate basis for requiring incumbent microwave licensees to subsidize C block PCS licensees in any manner. Second, if the Commission adopts rules permitting reimbursement for incumbents under the cost-sharing plan, an incumbent should not indirectly end up subsidizing the very entities enjoying the benefits of the incumbent's self--relocation.

12/ Tenneco Petition at 5-8.

13/ Omnipoint Opposition at 4; PCIA Opposition at 4-5.

14/ Omnipoint Opposition at 5.

V. CONCLUSION

For the reasons stated herein and in the Petition, Tenneco requests the Commission to clarify the new rules as requested and to grant Tenneco's requests for reconsideration.

Respectfully submitted,

TENNECO ENERGY

By: _____

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August 19, 1996

CERTIFICATE OF SERVICE

I, Bridget Y. Monroe, a secretary with the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, hereby certify that on this nineteenth (19th) day of August, 1996, a copy of the foregoing "Consolidated Reply to Oppositions to Tenneco's Petition for Clarification and Partial Reconsideration" was mailed, first class postage prepaid to:

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